IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO NO. 1009 OF 1988 (O&M)
XOBJ NO. 25-CII OF 1989
DATE OF DECISION: 09.08.2006

PARKASH CHAND BATRA AND ANOTHER

....APPELLANTS

VERSUS

KAPTAN SINGH

....RESPONDENT

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

PRESENT: MR. AMRIT PAUL, ADVOCATE
FOR THE APPELLANT
MR. AZAD SINGH, ADVOCATE
FOR RESPONDENT NO. 1.

JUDGEMENT

This appeal is filed by the owner and driver of the vehicle against the award of Motor Accident Claims Tribunal, Rohtak in MACT case No. 105 of 10.12.1986, dated 27.7.1988. The claim petition is result of an accident which occurred on 20.6.1986 at about 11.15 A.M. While claimant Constable Kaptan Singh driver of motor cycle bearing No. HYO 519 was coming to Rohtak, near village Simli on Rohtak- Jhajjar Road, a private bus bearing No. DEP 7766 driven by Randhir Singh in a rash and negligent manner struck against the motor cycle, as a result of which the claimant suffered injuries. The injured was shifted to Medical College Hospital, Rohtak. As per the hospital record available on file, the claimant was admitted in the hospital on 20.6.1986 at 1.45 P.M. and was discharged on 21.7.1986. It is submitted by the claimant that after discharge from the hospital, since he was not fully recovered, he remained admitted in Janki Dass Hospital at Sonepat where he remained under treatment of Dr. Bharat Bhushan Gupta and was operated upon on 23.8.1986. The negligence of the driver of the bus is patently evident from the site plan on record even in the appeal filed by the owner as the bus is shown at the extreme right hand of

the road when it struck the motor cycle. As per the MLR, at the time of admission in the hospital, the claimant suffered following injuries:

> "1. Clean lacerated wound 5 cm long over the dorsal aspect of right forearm.
> 2. Clean lacerated would 5 cm x 1 cm over the medial aspect of right foot with swelling round the injury.
> 3. Clean lacerated would 5 cm x 2 cm over the medial aspect of right leg. Swelling and crepitus felt over the area.
> 4. Tenderness over the right hip joint and the mobility of the joint was restricted."

It is also on record that the claimant had compounded fracture on right leg with dislocation of right hip for which he was operated upon. It has further come on the record of Dr. Bharat Bhushan Gupta, who was employed with Janki Dass Hospital, Sonepat that the claimant remained in the Janki Dass Hospital, Sonepat for three weeks and was operated upon by him on 23.8.1986. Nailing and bone grafting of tibia and a long leg plaster was applied. It was further stated threin that the claimant was still discharging sinus for which the treatment was going on. Further plea of the claimant was that because of the accident his chances of further promotion in the police department have been lost.

The Tribunal keeping in view the totality of the circumstances and referring to a judgment of this Court in **Rukmani Devi vs. Rameshwar Datt and another**, 1986 A.C.J. 1116, awarded a compensation of Rs. 20,000/- in total. The important fact, as has emerged from the pleadings in the present case, is that the owner of the vehicle, who was an Ex. President of Municipal Committee, Rohtak, did not even get the bus insured, accordingly, he was made liable to bear the entire compensation.

It is not disputed that the accident occurred because of rash and negligent driving of the driver of the bus. It is also not in dispute that the victim claimant was a constable in the police. In his statement the claimant stated that he had to undergo operation twice and remain hospitalised for a

considerable period in Medical College Hospital, Rohtak as well as in a private hospitals at Sonepat and Panipat. In any case, undisputed facts are that the victim claimant remained admitted for more than one month in Medical College Hospital, Rohtak. Though the claimant could not produce on record the bills for his treatment in the private hospital by Dr. Bharat Bhushan Gupta, who treated the claimant in Janki Dass Hospital, Sonepat, Dr. Gupta stated that when he had examined the claimant, the claimant had fracture both bones of right leg which had not united. His knee joint and ankle joint were found stiff, loss of sensations on the dorsum of the feet was present dorsiflextion of the toes was absent. Fracture was freely mobile at the time of examination. There was nothing in his cross examination which could dent his statement in his examination-in-chief.

In Rukmani Devi's case (supra), this Court awarded a sum of Rs. 25,000/- for the injuries suffered by the claimant therein in an accident which took place on 17.7.1979 where the claimant had admitted 20 to 25 days in hospital, whereas an accident in the present case occurred on 20.6.1986 and the claimant remained admitted in the hospital for more than a month, in my opinion reasonable compensation would be Rs. 35,000/-. The additional amount of compensation shall be payable to the claimant alongwith interest @ 6 % per annum from the date of claim application till payment.

The appeal and the cross-objections are disposed of in the manner indicated above and the award of the Tribunal is modified, accordingly.

August 9, 2006 (RAJESH BINDAL)
gsv JUDGE